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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of:

Limitations on Commercial Time
On Television Broadcast Stations

MM Docket No. 93-254

To: The Commission

COMMENTS OF POST-NEWSWEEK STATIONS, INC.

Post-Newsweek Stations, Inc. (Post-Newsweek), licensee of WDIV(TV), Detroit, Michigan; WFSB(TV), Hartford, Connecticut; WJXT(TV), Jacksonville, Florida and WPLG(TV), Miami, Florida hereby submits these comments in response to the Notice of Inquiry ("Notice") in the above-captioned proceeding.¹ The Commission in the Notice requests comment as to whether the public interest would be served by reimposition of rules limiting commercial matter broadcast by television broadcast stations. Post-Newsweek urges the Commission to refrain from reestablishing limits on the amount of commercial matter that a television station broadcasts.

Post-Newsweek owns and operates four network affiliated television stations. We recognize our obligation as a Commission licensee to serve members of the community of license and to

¹ Notice of Inquiry in MM Docket No. 93-254, FCC 93-459, 8 FCC Rcd 7277 (1993).

broadcast in the public interest. In each of our markets, we strive to fully serve the community of license with news, public affairs and other issue oriented programming. Post-Newsweek also understands the Commission's concern with over commercialization, but we submit that the Commission correctly determined in 1984 that the marketplace could best define appropriate commercial-time restrictions.² The reimposition of a government imposed strict rule establishing commercial limits and mandating paperwork burdens could seriously impair our ability to fully serve our communities. This potential impediment to our competitive capability and survival is all the more acute in light of the rapid changes in the video market.

The public has come to expect and rely upon the ability to receive free over-the-air universal communications service provided by broadcasting.³ In times of emergency, such as the hurricane in Miami, Florida in 1992, the public tunes into broadcast stations to receive necessary information. When politicians need to reach the populace, they turn to broadcast stations. The primary source of news and informational programming continues to be broadcast stations. Broadcasters also provide top quality entertainment programming free of charge to viewers. Members of the Congress,

² See Report and Order in MM Docket No. 83-670 (Television Deregulation), 98 FCC 2d 1076, 1101-05 (1984), recon. denied, 104 FCC 2d 357 (1986), aff'd in part and remanded in part sub. nom., Action for Children's Television v. FCC, 281 F.2d 741 (D.C. Cir. 1987).

³ Interestingly, the Commission commences this processing on its own motion and not in response to complaints from members of the public about commercial broadcast stations.

the Commission and the public have long recognized the valued role broadcasting plays in our society. However, the media marketplace is exploding with new players, new services, a convergence of industries and media merger mania. At such a time, it seems ironic that the Commission is contemplating shackling broadcasters with an out-dated regulatory restraint on broadcasters' main source of financial support, i.e. advertisement dollars.

Unlike other media in the communications marketplace, broadcasters primarily rely upon the sale of commercial time to support their activities. The sale of commercial time is necessary for broadcast stations to continue the myriad of broadcast and non-broadcast public interest activities which we currently provide to our communities of license. Restrictions on broadcasters' sale of commercial matter would impair our ability to compete and decrease the level of service to the public.

The Commission in 1984 correctly recognized that broadcasters needed additional flexibility to compete in the ever changing communications marketplace. It reasoned that private marketplace forces could better regulate this element of broadcasting than government mandated rules. The Commission expressly noted that the number of commercial minutes on most broadcast stations was below its commercial guidelines. The Commission opined that marketplace incentives were the decisive factor in determining the appropriate level of commercialization. Rather than furthering the public

interest, the Commission concluded that the commercial guidelines only added paperwork burdens to it and licensees. Under the former rules, licensees were required to keep detailed records of their policies and the Commission was required to review and monitor licensees' compliance. Moreover, there were indirect costs to broadcasters and the public from the rules as noted by the Commission in the 1984 decision. The strict guidelines prevented innovative programming attempts by broadcasters. The Commission recognized that since the guidelines applied solely to broadcasters, they also could have an anticompetitive effect. The Commission further noted that by their very nature, the commercial guidelines implicated the First Amendment and the right of stations to broadcast and of the public to receive these messages.

The 1984 decision has proven to have been an appropriate governmental response to the realities of the market. Post-Newsweek is unaware of any studies demonstrating harm to the public from the Commission's elimination of the commercial limits in 1984. Instead, the elimination of the rules has provided broadcasters with greater flexibility to fulfill their public interest responsibilities. The majority of broadcasters have utilized the additional flexibility provided for upon the elimination of the guidelines to find new and innovative ways to better serve their communities of license. Moreover, the flexibility has aided broadcasters in competing against alternative media during a time of decreased viewership for over-the-air television.

The Notice states the Commission periodically needs to reassess the public interest in light of "changing circumstances." Post-Newsweek believes that the changing circumstances which have occurred since 1984 argue against reimposition of the commercial guidelines. The broadcast industry has seen dramatic changes since 1984. There has been the creation of a viable fourth network and the announcements of a fifth and possible sixth network. Cable has grown at a rocketing pace and provides even greater competition to free over-the-air broadcasting. Other technologies bringing video to the home are expanding. In addition, the telephone companies are almost weekly announcing their intentions to become players in the video marketplace. Broadcasters face greater challenges than in 1984 in terms of competition. Broadcasters know that a failure to fully program to serve their communities of license will lead to decreased viewership and declining revenues. Consumers have greater choices today and can better ensure against any perceived overcommercialization by broadcast stations.

At the same time, the burdens on the Commission have increased due to the recent enactment of the Cable Communications Policy Act of 1992. This legislation has required greater staff resources from the Commission during a period where the government, in general, has been eliminating staff. Post-Newsweek believes the scarce resources of the Commission should be spent in areas where there is a need for a regulatory response. Commercialization on broadcast television is not one of those areas.

The only stations the Commission appears to really be concerned with regarding overcommercialization are the home shopping network stations. However, the Commission has specifically acknowledged that these stations are "serving the public interest, convenience and necessity."⁴ The pros and cons of home shopping stations have long been debated. The ultimate arbitrar of whether they serve the public interest should be left to the public to decide. As long as these stations program to serve their communities of licenses, the Commission should not be concerned with the number of commercials aired.⁵ Moreover, the actions of these limited number of stations should not be cause for subjecting the entire broadcast industry to new commercial guidelines.

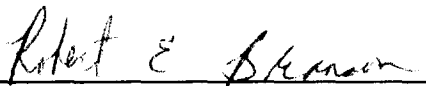
In conclusion, Post-Newsweek believes that the only relevant changed circumstances which have occurred since 1984 support the Commission's decision to eliminate the commercial guidelines. Neither changes in or failures of the market support reimposition

⁴ Home Shopping Stations, 8 FCC Rcd 5321 (1993), petition for reconsideration pending; accord, Media Family, Inc., 2 FCC Rcd 2540 (1987).

⁵ Congress has recognized only one area where it expressly stated a need for commercial limits. The Children's Television Act of 1990 requires the Commission to establish guidelines for limiting the number of commercial minutes in children's programming. See Children's Television Programming, 6 FCC Rcd 2111, Erratum, 6 FCC Rcd 3535, reconsideration granted in part and denied in part, 6 FCC Rcd 5093, further modified by Order, 6 FCC Rcd 5529 (1991). Congress easily could have at the same time adopted restrictions on commercial matter in other programming. It declined to adopt such rules, however.

of the commercial limits on free over-the-air television stations. Accordingly, Post-Newsweek urges the Commission to continue the regulatory course begun in 1984 by (a) removing regulatory barriers to competition; (b) providing for innovation and creativity by broadcasters; (c) eliminating paperwork and other burdens on itself and licensees and (d) continuing to support the First Amendment freedoms of broadcasters.

Respectfully submitted,
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